

# **EXHIBIT 4**

**01/30/2018 - Transcript Excerpts from Second  
Deposition of Guy A. Davis**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEVADA

_____	)	
CUNG LE, NATHAN QUARRY, JON	)	
FITCH, BRANDO VERA, LUIS	)	
JAVIER VAZQUEZ, and KYLE	)	
KINGSBURY, on behalf of	)	
themselves and all others	)	Case No.
similarly situated,	)	
	)	2:15-cv-01045-
Plaintiffs,	)	RFB-(PAL)
	)	
vs.	)	
	)	
ZUFFA, LLC, d/b/a ULTIMATE	)	
FIGHTING CHAMPIONSHIP and	)	
UFC,	)	
	)	
Defendants.	)	
_____	)	

VOLUME 2

VIDEOTAPED DEPOSITION OF GUY A. DAVIS, CPA

Washington, D.C.

Tuesday, January 30, 2018

MAGNA LEGAL SERVICES  
(866) 624-6221  
[www.MagnaLS.com](http://www.MagnaLS.com)

<p style="text-align: right;">Page 175</p> <p>1 2 3 4 5 January 30, 2018 6 10:56 a.m. 7 8 9 Videotaped Deposition of GUY A. DAVIS, CPA, 10 held at the offices of Boies Schiller Flexner 11 LLP, 1401 New York Avenue, N.W., Washington, 12 D.C., pursuant to the Federal Rules of Civil 13 Procedure, before John L. Harmonson, a Registered 14 Professional Reporter and Notary Public of the 15 District of Columbia, who officiated in 16 administering the oath to the witness. 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 177</p> <p>1 EXAMINATION INDEX 2 WITNESS PAGE 3 GUY A. DAVIS, CPA 4 Examination by Mr. North 179 5 6 * * * 7 8 EXHIBIT INDEX 9 EXHIBIT NO. DESCRIPTION PAGE 10 Davis Exhibit 1 Expert Report of Guy Davis 180 11 Davis Exhibit 2 Rebuttal Expert Report of 180 12 Guy Davis 13 Bidarian Exhibit 12 Goldman Sachs 264 14 Confidential Memorandum 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 176</p> <p>1 APPEARANCES 2 3 On behalf of the Plaintiffs: 4 COHEN MILSTEIN SELLERS &amp; TOLL, PLLC 5 1100 New York Avenue, N.W. 6 Suite 500, East Tower 7 Washington, D.C. 20005 8 BY: RICHARD A. KOFFMAN, ESQ. 9 10 11 On behalf of the Defendants: 12 BOIES SCHILLER FLEXNER, LLP 13 1401 New York Avenue, N.W. 14 Washington, D.C. 20005 15 BY: EVAN E. NORTH, ESQ. 16 STACEY KAMYA GRIGSBY, ESQ. 17 18 19 ALSO PRESENT: 20 THOMAS KARWACKI, Legal Video Specialist 21 22 23 24</p>	<p style="text-align: right;">Page 178</p> <p>1 ----- 2 PROCEEDINGS 3 10:56 a.m. 4 ----- 5 THE VIDEOGRAPHER: We are now on the 6 record. This begins disk number 1 in the 7 deposition of Guy Davis, in the matter of 8 Cung Le, et al. v. Zuffa, LLC, d/b/a 9 Ultimate Fighting Championship and UFC, in 10 the United States District Court for the 11 Eastern District of Nevada, Docket Number 12 2:15-cv-01045-RFB-(PAL). 13 Today is Tuesday, January 30, 2018, 14 and the time is 10:56 a.m. This deposition 15 is being taken at 1401 New York Avenue, 16 Northwest, Washington, D.C., at the request 17 of Bois Schiller Flexner, LLP. 18 The videographer is Thomas Karwacki of 19 Magna Legal Services, and the court reporter 20 is John Harmonson of Magna Legal Services. 21 Will counsel and all parties present 22 state your appearances and whom they 23 represent, please. 24 MR. NORTH: Good morning. Evan North</p>

Page 179

1 for defendant, Zuffa, LLC.

2 MS. GRIGSBY: Stacey Grigsby, Boies  
3 Schiller & Flexner, for Zuffa, LLC.

4 MR. KOFFMAN: Rich Koffman, Cohen  
5 Milstein, for plaintiffs.

6 THE VIDEOGRAPHER: Will the court  
7 reporter please swear in the witness.  
8 Whereupon,

9 GUY A. DAVIS, CPA,  
10 after having been first duly sworn or affirmed,  
11 was examined and did testify under oath as  
12 follows:

13 - - -

14 EXAMINATION

15 BY MR. NORTH:

16 Q. Good morning, Mr. Davis. You've been  
17 deposed in this case before, so I'll skip a lot  
18 of the formalities today.

19 A. Okay.

20 Q. But I'll just say that if you don't  
21 understand a question, please let me know. And  
22 if you answer, I'll assume you understood the  
23 question. Is that fair?

24 A. That's fair.

Page 180

1 (Exhibit 1, previously marked for  
2 identification, is attached hereto.)

3 (Exhibit 2 marked for identification  
4 and attached hereto.)

5 BY MR. NORTH:

6 Q. So for reference today I have handed  
7 you a document marked G. Davis Exhibit 1 that was  
8 introduced at your first deposition. It's your  
9 original expert report in this case.

10 And I've also handed you your rebuttal  
11 report which has been premarked G. Davis  
12 Exhibit 2.

13 Do you have those documents?

14 A. I do. May I take a second to look at  
15 them?

16 Q. You may.

17 A. Yes, these both appear to be complete  
18 copies of both reports.

19 Q. Are there any matters on which you  
20 disagree with Elizabeth Davis that you don't note  
21 in one of your reports?

22 MR. KOFFMAN: Object to the form.

23 THE WITNESS: I'm not -- I'm not sure  
24 I can answer that with certainty. She makes

Page 181

1 a lot of points in her lengthy original  
2 report. I think -- I think the counsel has  
3 instructed me to address certain of her  
4 points that she makes in her report in my  
5 rebuttal. But I can't think of any off the  
6 top of my head.

7 BY MR. NORTH:

8 Q. Can you turn to page 8 of your  
9 original report, please.

10 Is this a complete list of the  
11 assignments you received from plaintiffs' counsel  
12 as of the date of your original report?

13 A. Yes. And it goes on to page 9. Yes.

14 Q. Let's look at page 9, Number 5,  
15 entitled "Financial Capacity."

16 Is it correct that your assignment  
17 here was to determine whether Zuffa had the  
18 financial capacity to pay more compensation to  
19 its fighters than the actual amounts paid?

20 A. Yes.

21 Q. And as part of your work in preparing  
22 your original report, you didn't attempt to  
23 determine how much more Zuffa could have paid  
24 fighters, did you?

Page 182

1 A. I did not.

2 Q. Did you have all of the relevant data  
3 available to you to perform such an analysis?

4 A. Since the first report, there were a  
5 few extra financial statements that were provided  
6 to us between the date of the first report and  
7 the second report. I believe in particular they  
8 related to 2016. And there may have been one or  
9 two other pieces of information that were relied  
10 upon in preparing my second report that I may  
11 have obtained through independent research.

12 But with the exception of those two, I  
13 think a lot of the data that I had in connection  
14 with my original report was much of the same data  
15 that I used to prepare the second report.

16 Q. You mentioned that there were a few  
17 extra financial statements provided to us. What  
18 does the "us" refer to?

19 A. To Protiviti; to my firm.

20 Q. And why were those provided to  
21 Protiviti?

22 MR. KOFFMAN: Object to the form.

23 THE WITNESS: We asked for them. I  
24 don't believe -- we asked for them -- I

Page 183

1 think we asked for them in the original  
2 report as well, but I don't think they had  
3 been produced yet. And then we asked for  
4 them again, and when we did the second  
5 report they were available.

6 BY MR. NORTH:

7 Q. Do you know one way or another whether  
8 plaintiffs' counsel already had possession of  
9 those reports when you served your original  
10 expert report?

11 A. I do not know.

12 Q. But you asked for the reports before  
13 the original report and you did not receive them.  
14 Is that fair?

15 MR. KOFFMAN: Objection; asked and  
16 answered.

17 You can answer it again.

18 THE WITNESS: I believe it was more of  
19 a general request in connection with the  
20 original report, could we have all the  
21 available audited financial statements for  
22 Zuffa.

23 The two reports that I'm referring to  
24 are kind of unique. I don't believe -- I

Page 184

1 mean, they're unique in the sense that there  
2 were two different financial statements. It  
3 was a presale stub period in 2016 and then  
4 there was a separate report for the post  
5 sale.

6 So, you know, I think the accounting  
7 reports were prepared in connection with the  
8 sale, so they were sort of outside the  
9 ordinary course of Zuffa's traditional audit  
10 process. So that may have distinguished  
11 them from others.

12 But originally we asked for all the  
13 audited financial statements that were  
14 available. We received through 2015. And  
15 then in connection with the second report we  
16 were given a separate file. I don't  
17 honestly know or recall the timing or where  
18 they came from, but we were given a separate  
19 file that had presale data that was relevant  
20 to the rebuttal report.

21 BY MR. NORTH:

22 Q. Before your first deposition,  
23 plaintiffs never asked you at any point to  
24 determine how much more Zuffa could have paid

Page 185

1 fighters as part of your assignment. Is that  
2 correct?

3 A. That's correct.

4 Q. Before the date of your last  
5 deposition, you never performed computations in  
6 any way to determine how much more Zuffa could  
7 have paid fighters. Is that correct?

8 A. Well, I made the determination as part  
9 of my original report that they could pay more.  
10 So I did -- I did look at the amount of  
11 distributions that were paid and the profits of  
12 the company. And it wasn't difficult to  
13 determine that there was a capacity to pay more.  
14 But I did not do a detailed analysis to determine  
15 how much more they could have paid.

16 Q. Do you recall testifying that the  
17 reason you contemplated a hypothetical shift of  
18 income from Zuffa's original equity holders to  
19 the athletes was to rebut a possible argument on  
20 behalf of Zuffa that they couldn't afford to pay  
21 more?

22 A. I do.

23 MR. KOFFMAN: Object to the form.  
24 Sorry. Go ahead.

Page 186

1 THE WITNESS: Excuse me. I do.

2 BY MR. NORTH:

3 Q. But despite anticipating that argument  
4 from Zuffa before your last deposition, you did  
5 not seek to calculate how much more Zuffa could  
6 afford to pay. Is that right?

7 MR. KOFFMAN: Objection; asked and  
8 answered.

9 You can answer.

10 THE WITNESS: Yes.

11 BY MR. NORTH:

12 Q. Let's turn to the list of assignments  
13 in your rebuttal report, Exhibit 2, starting on  
14 page 7.

15 In Paragraph 5 you state that counsel  
16 instructed you to determine how much more Zuffa  
17 could have paid its fighters assuming alternative  
18 but feasible expense and capital structures.

19 Is that correct?

20 A. Yes.

21 Q. Did you use any information for that  
22 analysis that was not available to you at the  
23 time you prepared your original report?

24 MR. KOFFMAN: Object to the form. I

Page 187

1 believe he's answered that, but you can  
2 answer it again.

3 THE WITNESS: The only -- the only  
4 information that I had that was new was the  
5 2016. All the other information from 2005  
6 to 2015 I had.

7 BY MR. NORTH:

8 Q. And I think you testified previously  
9 that you didn't know one way or another whether  
10 those documents were actually available to you.  
11 Is that correct?

12 MR. KOFFMAN: Objection; asked and  
13 answered.

14 THE WITNESS: I think my response was  
15 we made a general request for audited  
16 financial statements. I had assumed we  
17 received everything that was available, and  
18 then subsequently, when they -- when I was  
19 asked to do the analysis of how much more  
20 they could pay, I asked again if there was  
21 information available for 2016.

22 BY MR. NORTH:

23 Q. Would you have been able to perform  
24 the analysis in your rebuttal report when you did

Page 188

1 your original report even though you didn't have  
2 those two additional financial statements?

3 MR. KOFFMAN: Object to the form.

4 THE WITNESS: I would have had to make  
5 assumptions about 2016 or I would have had  
6 to limit the analysis to the period ending  
7 December 31, 2015. I could have done an  
8 analysis, but it wouldn't have been as  
9 thorough as the one that's done here.

10 BY MR. NORTH:

11 Q. In Paragraph 4 of your rebuttal report  
12 you state that "Zuffa's expert, Elizabeth Davis,  
13 opined that Zuffa could not have afforded to pay  
14 the damages as set forth in the Plaintiffs'  
15 expert reports submitted by Drs. Zimbalist and  
16 Singer."

17 Do you see that?

18 A. Yes.

19 Q. Is that the opinion you are responding  
20 to in your rebuttal report?

21 A. Yes.

22 Q. Are you responding to any other  
23 opinions from Zuffa's experts?

24 A. I don't think so.

Page 189

1 Q. And Ms. Davis opined using the damages  
2 numbers provided by plaintiffs' experts. Is that  
3 right?

4 A. Yes.

5 Q. And those numbers are 972 million from  
6 Dr. Zimbalist and 848 million from Dr. Singer for  
7 one model, and 1.6 billion from Dr. Singer for  
8 another model. Is that generally accurate?

9 A. I'll take your word for it. It seems  
10 accurate to me. I don't have the exact numbers  
11 in front of me.

12 Q. Okay. Other than plaintiffs'  
13 economists' numbers, is it your understanding  
14 that Elizabeth Davis offered an opinion regarding  
15 the financial effect of increasing fighter  
16 compensation by some other amount?

17 MR. KOFFMAN: Object to the form.

18 THE WITNESS: I'm sorry. Could you  
19 repeat that question again?

20 BY MR. NORTH:

21 Q. Sure.

22 So backing up a second. Paragraph 4,  
23 you acknowledged that Elizabeth Davis's opinion  
24 regards whether Zuffa could have afforded to pay

Page 190

1 the damages provided by plaintiffs' experts. Is  
2 that right?

3 A. Well, to be clear, the next sentence  
4 makes it -- makes it more specific. Ms. Davis  
5 said that if there is no increased market output,  
6 that Zuffa could not have afforded to pay the  
7 damages set forth by Dr. Zimbalist and  
8 Dr. Singer.

9 My rebuttal report says that if you  
10 assume no additional market output, this is what  
11 Zuffa could have afforded to pay.

12 But in both her report and my report,  
13 the assumption is that there is no increased  
14 market output despite the fact that the  
15 economists have said that there would be.

16 Q. I see. So setting aside increased  
17 market output, does Ms. Davis opine on Zuffa's  
18 ability to pay any amounts other than the damages  
19 estimates provided by plaintiffs' experts?

20 MR. KOFFMAN: Object to the form.

21 THE WITNESS: I don't believe so.

22 BY MR. NORTH:

23 Q. In Paragraph 6 of your rebuttal  
24 report, under Opinion 1, you state that Zuffa



Page 191

could have paid its fighters between 525.2 million and 706.7 million more than the amounts actually paid and remained a financially healthy company providing certain changes were made to the company's expense and capital structure.

Is that right?

A. I'm sorry, were you at page 6 or Paragraph 6?

Q. I'm sorry, page 10, Paragraph 6. Your summary of opinions.

A. Yes. Could you repeat the question, please?

Q. Certainly.

So under Opinion Number 1, you state that Zuffa could have paid its fighters between 525.2 million, Scenario 1, and 706.7 million, Scenario 6, more than the amounts actually paid and remained a financially healthy company offering substantial returns for its investors without the benefit of any additional growth in the MMA industry.

Did I read that right?

A. Yes.

Page 192

Q. You did not determine that Zuffa could have afforded to increase athlete compensation by more than 706.7 million. Is that right?

MR. KOFFMAN: Object to the form.

THE WITNESS: I didn't put a scenario in here that would allow Zuffa to pay more than 706, but I was conservative in constructing this. There are other scenarios where they could have paid more than 706, but I limited my analysis to these six scenarios.

The real point of the report is that there's any number of scenarios wherein Zuffa could have paid, you know, 500 to \$700 million more to its fighters. And the purpose of setting forth six different scenarios is just to present some examples of what some of those scenarios are.

BY MR. NORTH:

Q. And Scenario 6 offers the highest amount of increased compensation. Is that fair?

A. It's the highest amount that I included in my report, yes.

Q. Were there any additional amounts that

Page 193

you concluded that Zuffa could have afforded to pay that you did not include in your report?

A. There are other scenarios where you could pay more than 706, as I mentioned. I elected not to put them in my report because I wanted my report to be conservative.

Q. And do you intend to offer an opinion at trial on those scenarios?

A. No.

Q. So you, in this report, did not determine that Zuffa could have afforded to increase athlete compensation by more than 706.7 million. Is that true?

MR. KOFFMAN: Object to form.

BY MR. NORTH:

Q. Is that correct?

A. That is correct.

Q. Would you agree that the increased compensation amounts in all six of your scenarios reflect amounts that are less than the damages figures offered by Dr. Singer and Dr. Zimbalist?

A. Mathematically, numerically they are smaller numbers. But these are not presented in my report as alternative damage numbers. These

Page 194

are -- the analysis here and the conclusions are limited to the meaning that's associated with them based on my instructions. This is not an alternative damages analysis. This is a capacity to pay analysis, which is what I was asked to do.

Q. Did you attempt to determine the upper bound of how much Zuffa could have increased fighter compensation while remaining a financially healthy company?

A. Well, as I said before, I prepared the analysis in a conservative fashion such that I limited the analysis to Scenario 6, which is 38 percent of sales revenues. But I did not endeavor to calculate what the maximum possible amount was.

If you -- as I mentioned, the analysis I've done here is conservative so that the financial health of the company is very strong under any of these scenarios. If I were less conservative, the number would be higher. And if you assumed a higher market output, the number would be higher as well.

So you could infer from this data that with those two adjustments that these

Page 195

1 compensations would fall within the range of what  
2 Dr. Singer and Dr. Zimbalist have opined. But  
3 having said that, this is not an alternative  
4 damages analysis.

5 Q. In your report, did you analyze  
6 whether Zuffa could have afforded to pay the  
7 damages set forth by plaintiffs' experts Singer  
8 and Zimbalist?

9 MR. KOFFMAN: Object to the form.

10 THE WITNESS: No.

11 BY MR. NORTH:

12 Q. Did you analyze in any of your  
13 scenarios, whether in your report or not, whether  
14 Zuffa could pay \$1.6 billion in additional  
15 compensation to fighters?

16 A. No. But keep in mind the \$1.6 billion  
17 estimate assumes a larger output. And I was  
18 specifically instructed in the context of this  
19 analysis to perform it based on an assumption of  
20 no increased market output.

21 Q. So your analysis -- is it fair to say  
22 that your analysis does not address Elizabeth  
23 Davis's opinion that Zuffa would have had a  
24 cumulative operating loss and negative EBITDA

Page 196

1 over the class period if it had increased athlete  
2 compensation by the amount of plaintiffs' damages  
3 estimates?

4 MR. KOFFMAN: Object to form.

5 THE WITNESS: I'm sorry. Can you  
6 repeat that question?

7 BY MR. NORTH:

8 Q. Sure.

9 So is it fair to say that your report  
10 does not address Elizabeth Davis's opinion that  
11 Zuffa would have had a cumulative operating loss  
12 and negative EBITDA over the class period if it  
13 had increased athlete compensation by the amount  
14 of plaintiffs' damages estimates?

15 MR. KOFFMAN: Same objection.

16 THE WITNESS: Well, it addresses it --  
17 my report addresses that opinion in a sense  
18 that her analysis and her conclusions do not  
19 accurately reflect what the capacity of  
20 Zuffa was or what capacity that Zuffa had to  
21 pay additional fighters.

22 She did not alter the capital  
23 structure within the -- within the means  
24 that were available to the original equity

Page 197

1 holders. She did not consider the -- well,  
2 she did at one point consider the aviation  
3 expenses in a side note of her report.

4 But I think the conclusion that she --  
5 that she has in her report is misleading  
6 because she's not really measuring the  
7 value -- the capacity of the company to pay  
8 additional fighter compensation. She's  
9 merely subtracting the damage number that  
10 the economists calculated from the status  
11 quo financial statements of the business.

12 And there were many decisions that  
13 were made by the original equity holders  
14 that could have been made differently that  
15 would have afforded anyone -- or enabled the  
16 company to pay much higher compensation to  
17 its fighters.

18 BY MR. NORTH:

19 Q. Okay. I appreciate that, but I think  
20 I asked a slightly different question. And that  
21 is: Is it fair to say that your report does not  
22 address Elizabeth Davis's opinion that Zuffa  
23 would have had a cumulative operating loss and  
24 negative EBITDA over the class period if it had

Page 198

1 increased athlete compensation by the amount of  
2 plaintiffs' damages estimates?

3 MR. KOFFMAN: Object to the form.  
4 That's exactly the question that he did  
5 answer.

6 You can answer it again.

7 THE WITNESS: I addressed that  
8 specific issue in the sense that I have  
9 calculated what the profits would be and I  
10 have calculated what the financial condition  
11 of the company would be under alternative  
12 capital structures for the amounts that are  
13 in my -- the amounts that are set forth in  
14 my report.

15 I do not in my report use the exact  
16 same number that she has in hers, which I  
17 didn't assess the \$840 million number that  
18 was in one of the economist's reports. But  
19 that wasn't my instruction.

20 BY MR. NORTH:

21 Q. So looking back at Paragraph 4 of your  
22 rebuttal report, you state that "Elizabeth Davis  
23 did not address the portions of Dr. Singer's" --  
24 "Dr. Zimbalist's and Dr. Singer's reports that



Page 199

1 explained the larger industry (larger output  
2 market) that would have existed absent the  
3 alleged anticompetitive behavior."

4 Did I read that right?

5 A. Yes, you did.

6 Q. Are you offering an opinion on the  
7 size of the output market that plaintiffs'  
8 economists contend would have existed absent the  
9 alleged anticompetitive behavior?

10 A. No.

11 Q. Did plaintiffs ask you to perform any  
12 work that is not described in your rebuttal  
13 report?

14 MR. KOFFMAN: I'm sorry. Do you mean  
15 excluding the original report?

16 MR. NORTH: Yes. Thank you.

17 MR. KOFFMAN: So why don't you ask the  
18 question again, I'm sorry, just to make it  
19 clear.

20 MR. NORTH: Sure. I'll try to clean  
21 that up.

22 BY MR. NORTH:

23 Q. So for purposes of the work that you  
24 did for your rebuttal report, did plaintiffs'

Page 200

1 counsel ask you to do any work for the report  
2 that is not included in the report?

3 A. No.

4 Q. Setting aside what plaintiffs' counsel  
5 asked you to do, did you perform any additional  
6 work that is not described in your rebuttal  
7 report in preparing it?

8 A. No. I mean, there were -- there  
9 were -- as you can see from the exhibits, we  
10 created a comprehensive model, and that model was  
11 an evolutionary process. We created it and then  
12 we performed quality controls. We refined it.  
13 So there were previous versions of that same  
14 model that -- that existed. I didn't put every  
15 previous version of the model in the report. But  
16 when the model was complete, then our quality  
17 control model was also complete. Then we  
18 developed the six scenarios in there in the  
19 report.

20 But there is nothing -- there is  
21 nothing substantive or there are no conclusions  
22 that I have reached in connection with this  
23 assignment that are not in my report.

24 Q. So let's walk through the six

Page 201

1 hypothetical scenarios in the rebuttal report,  
2 looking first at Paragraph 6.

3 So in Paragraph 6 at Opinion 1 you  
4 state that all of your scenarios assume Zuffa  
5 would not have borrowed \$320 million in 2007 and  
6 2009. Correct?

7 A. Yes.

8 Q. Why do you make that assumption?

9 A. The underpinnings of this analysis and  
10 the point that I had made from the beginning is  
11 that Zuffa could afford to pay more money to its  
12 fighters by paying less money to its  
13 shareholders. And the \$320 million that was  
14 borrowed in 2007 and 2009 was used specifically  
15 to pay distributions to shareholders.

16 So if I'm doing an analysis to reduce  
17 the amount of money to shareholders, you would  
18 need to remove that debt from the books in order  
19 to determine what the company could afford to pay  
20 its shareholders under -- under this analysis.  
21 So when you -- when you remove that debt from the  
22 books, the interest expense obviously and the  
23 principal payments during the class period are  
24 much lower, which frees up cash which could be

Page 202

1 paid to fighters, which was the purpose of the  
2 analysis that I was doing.

3 Q. Are you offering an opinion that the  
4 loans harmed Zuffa in any way?

5 MR. KOFFMAN: Object to the form.  
6 Ambiguous.

7 THE WITNESS: They reduced Zuffa's  
8 capacity to pay fighters because they had to  
9 pay interest expense on those loans.

10 BY MR. NORTH:

11 Q. But you're not offering an opinion  
12 that the loans harmed Zuffa in any way?

13 MR. KOFFMAN: Object to form.

14 THE WITNESS: The loans created a cash  
15 drain, a cash burden on the company for the  
16 entire class period. And if that is -- if  
17 that is -- I don't know that I would  
18 characterize that as financial harm, but  
19 it's a financial burden. It's an increased  
20 requirement to pay interest expense on those  
21 loans.

22 BY MR. NORTH:

23 Q. Did you examine how the results of  
24 these scenarios would have changed if you had not

Page 207

1 column it says \$185 million distributed to the  
2 equity holders during the class period?

3 Q. Yes.

4 A. In my original report I testified that  
5 the -- the distribution during the class period  
6 was \$370 million. That only went through 2015.  
7 So if you add I think it's another \$63 million or  
8 so for 2016, it's roughly \$400 million were  
9 distributed -- was distributed in the actual  
10 world. And in the Scenario 3 \$185 million is  
11 distributed during that comparable period.

12 So that's the -- that's the magnitude  
13 of the difference for Exhibit 3 -- I mean for  
14 Scenario 3. And I can go through the other  
15 scenarios and give you a range. But the -- the  
16 Scenarios 4, 5 and 6 are going to be --  
17 actually --

18 Q. Why don't we just limit it to  
19 Exhibit 3.

20 A. Okay. I will say in 4, 5 and 6 a lot  
21 more money is distributed. It's complicated, but  
22 I can explain that if you need me to. In  
23 Exhibit 3, the difference is somewhere between  
24 the low 400s that was actually paid and

Page 208

1 \$185 million that was paid in this hypothetical  
2 scenario.

3 Q. But would you agree that your  
4 hypothetical distributions are substantially  
5 lower than the actual distributions?

6 MR. KOFFMAN: Object to the form.

7 THE WITNESS: Yes. And that's the  
8 whole premise of the analysis, is to -- I've  
9 taken the -- or I've approached the  
10 assignment to say we're paying the  
11 shareholders less in distributions and we're  
12 paying more to the fighters, and how much  
13 more can you do that -- how much can you do  
14 that -- how much more can you pay the  
15 fighters without creating a financial issue  
16 for the company.

17 BY MR. NORTH:

18 Q. Did you make any other assumptions  
19 that apply to all of your hypothetical scenarios?

20 MR. KOFFMAN: Object to the form.

21 THE WITNESS: I believe  
22 Paragraph 6 was -- or Paragraph 6 we talk  
23 about a few of those. Those are the two.

24 I'm sure there are many assumptions

Page 209

1 that are saying that would apply to all, but  
2 these are the most -- these are the most  
3 relevant or the most -- the ones that have  
4 the most impact.

5 BY MR. NORTH:

6 Q. If they appear in some other part of  
7 the report, could you direct my attention to  
8 where -- what those other assumptions are or tell  
9 me what other assumptions are?

10 MR. KOFFMAN: Object to the form.

11 THE WITNESS: One second, please.

12 Okay. One assumption, additional assumption  
13 that applies to all the scenarios is that  
14 there's several ways that you can get more  
15 money to the shareholders. There's  
16 generally three. You can pay -- excuse me,  
17 to the fighters.

18 You can pay the shareholders less  
19 money. You can avoid paying interest on  
20 debt that you didn't need to borrow. And  
21 you can shift excess aviation expenses and  
22 management fees to the fighters as well.

23 So that third one applied to all six  
24 scenarios where excess aviation expenses

Page 210

1 were assumed to be paid to the fighters  
2 first and then -- and once that condition  
3 was satisfied, then the -- any additional  
4 compensation that came to the fighters  
5 either came from interest savings or a  
6 reduction in shareholder distributions.

7 BY MR. NORTH:

8 Q. Okay. And are there any other  
9 assumptions that apply to all six scenarios?

10 A. There's an assumption that there is no  
11 increased market, output market; there is no  
12 change in the revenues of the company; there's no  
13 change in expenses of the company other than  
14 fighter comp and aviation and interest.

15 Those are the only ones I can think  
16 of.

17 Q. Okay. Did you consider making any  
18 other assumptions?

19 A. Well, in the -- in the process of  
20 developing the six different scenarios there  
21 were -- you know, the reason you build a model is  
22 so that you can test different assumptions. So  
23 there were other assumptions that were tested.

24 I tested -- you know, for example in

Page 227

1 fair?

2 A. Yes.

3 Q. Are you offering an opinion on when  
4 Zuffa's alleged anticompetitive conduct began?

5 A. No.

6 Q. Are you offering an opinion on when  
7 the alleged anticompetitive conduct harmed  
8 Zuffa's competitors?

9 A. No.

10 Q. You state in Paragraph 12 that in  
11 Scenarios 1 through 3 operating cash is used to  
12 retire all outstanding long-term debt by December  
13 31, 2009. Correct?

14 A. Are you referring to the sentence that  
15 says, "The funds produced from operations..."?

16 Q. I am, yes.

17 A. That would be -- if the funds produced  
18 from operations are accumulated from operations  
19 without the excess of -- without the extra debt  
20 and the excessive aviation expenses, so cash is  
21 accumulating during this time period. And then  
22 at the end of 2009 the company had sufficient  
23 cash to pay off all of its debt, even the debt  
24 that it borrowed excluding the \$320 million, so

Page 228

1 what I call discretionary distribution debt.

2 Q. And how did you choose the date  
3 December 31, 2009?

4 A. That was the date on which the  
5 cumulative cash balance was sufficient to pay off  
6 all the debt.

7 Q. Is it your understanding that that  
8 date is prior to the beginning of the class  
9 period in this case?

10 A. Yes.

11 Q. Is it your opinion that Zuffa should  
12 not have a capital structure that reflects debt?

13 MR. KOFFMAN: Object to the form.

14 THE WITNESS: It's my opinion that  
15 they could have elected one. They could  
16 have chosen one that didn't have any debt.

17 BY MR. NORTH:

18 Q. Are you offering an opinion --

19 A. Let me restate that.

20 In Scenarios 1, 2 and 3, Zuffa,  
21 because they were paying the higher compensation  
22 beginning in 2005, required some level of debt in  
23 order to complete the, I think it was the Pride  
24 acquisition; it was \$54 million in it might have

Page 229

1 been 2007. They needed the debt. Because I  
2 began the increased fighter compensation earlier.

3 In Scenarios 4 through 6 where I  
4 didn't increase fighter compensation until the  
5 beginning of the class period, they had enough  
6 cash on hand such that they didn't need to borrow  
7 any debt and they could still buy Pride and  
8 StrikeForce and meet all their other financial  
9 obligations.

10 Q. So is it fair to say, based on your  
11 analysis, that in Scenarios 1 through 3,  
12 increasing fighter compensation by the amounts in  
13 the scenarios partially required the company to  
14 take on some debt?

15 MR. KOFFMAN: Object to the form.

16 THE WITNESS: In Scenarios 1 through  
17 3, yes. Which I've modeled in the report,  
18 and then I modeled when they accumulated  
19 enough cash to pay it off, they paid it off.

20 BY MR. NORTH:

21 Q. Are you offering an opinion that  
22 Zuffa's actual capital structure was improper?

23 A. No. I'm offering an opinion that the  
24 original equity holders had the option, if they

Page 230

1 chose to do so, to borrow a lot less money than  
2 they did. And in Scenarios 4 through 6 they  
3 could have elected not to borrow any money.

4 Q. Are you offering an opinion that  
5 Zuffa's capital structure was indicative of  
6 anticompetitive conduct?

7 A. No.

8 MR. KOFFMAN: Object to the form.

9 THE WITNESS: No.

10 BY MR. NORTH:

11 Q. Was Zuffa's capital structure simply  
12 not as conservative as your models?

13 A. That's one way of characterizing it,  
14 yes.

15 Q. Was there any requirement that Zuffa  
16 had to retire its long-term debt by  
17 December 2009?

18 A. No.

19 Q. In Paragraph 12 you also state that  
20 "In the first three scenarios, funds produced  
21 from operations without the burden of  
22 discretionary distribution debt, excess aviation  
23 expenses, and management fees are used to pay  
24 shareholders the greater of 40 percent of pro

Page 243

1 A. Well, the company had the capacity to  
2 borrow money, particularly in 2010 right before  
3 the class period. They had \$160 million in  
4 normalized EBITDA and they could have borrowed  
5 money.

6 But I chose to -- but to quantify how  
7 much more they could have borrowed would have  
8 required that I make assumptions about the risk  
9 thresholds and covenants and decision-makers of  
10 other third-party creditors, and I didn't want to  
11 do that. I wanted to limit this analysis to -- I  
12 wanted to make it more conservative and limit it  
13 to scenarios where there was less debt rather  
14 than more debt. So I wasn't relying upon the  
15 decision of a bank to put more money into the  
16 company.

17 Q. In each of your scenarios, isn't it  
18 true that the pro forma purchase price of Zuffa  
19 in 2016 is lower than the actual purchase price  
20 of 3.775 million even after taking into account  
21 the debt on Zuffa's balance sheet at the time of  
22 the acquisition?

23 A. Yes.

24 Q. Zuffa's enterprise value was lower

Page 244

1 under your pro forma calculations at least in  
2 part due to its higher expense structure. Would  
3 you agree?

4 A. Yes, the majority was because of the  
5 higher expense structure. And as you can see  
6 from the exhibits, we were holding the valuation  
7 multiple constant and recalculating what the  
8 proceeds would have been under the different  
9 scenarios. I mean, it's the proper way to do it.

10 It's also the way that Ms. Davis  
11 suggested that that type of adjustment be done as  
12 well. In her deposition, she acknowledged that  
13 if there was a different EBITDA number, you would  
14 hold the multiple constant and recalculate the  
15 proceeds.

16 So I'm doing it the way it's supposed  
17 to be done, but also consistent with the way  
18 Ms. Davis did it.

19 Q. So you agree there is a relationship  
20 between the EBITDA and the valuation of the  
21 company?

22 A. Yes.

23 Q. Let's turn to a separate section of  
24 your report. Are you aware of the

Page 245

1 characteristics of the but-for world as  
2 constructed by plaintiffs' economists?

3 A. This is not in my report?

4 Q. I'm sorry. That was a little bit of a  
5 misleading introduction.

6 In general, are you aware of the  
7 characteristics of the but-for world as  
8 constructed by plaintiffs' economists?

9 MR. KOFFMAN: Object to the form.

10 THE WITNESS: Generally but not  
11 specifically.

12 BY MR. NORTH:

13 Q. Have you considered how those  
14 characteristics might affect the analysis in your  
15 rebuttal report?

16 A. No.

17 Q. Are you aware that one of the elements  
18 of the but-for world is increased fighter  
19 compensation?

20 A. Yes.

21 Q. Do you agree that when you're  
22 evaluating a scenario where the fighters are paid  
23 more money, you've introduced a but-for world  
24 wherein the MMA industry is larger, it has higher

Page 246

1 output, and there are more competitors?

2 MR. KOFFMAN: Object to the form.

3 THE WITNESS: Generally speaking, I  
4 understand that to be the case.

5 BY MR. NORTH:

6 Q. And you would agree that these  
7 characteristics would apply to any hypothetical  
8 involving paying fighters more money?

9 MR. KOFFMAN: Object to the form.

10 THE WITNESS: I believe I testified to  
11 this in my earlier deposition.

12 Specifically, I said that the -- in a world  
13 where there's larger output, it was not --  
14 it was not made clear to me whether Zuffa  
15 would be a larger company or a smaller  
16 company. The analysis that I've done here,  
17 as I testified before, assumes that there is  
18 no change in the market output and there is  
19 no change in Zuffa's revenues. That was the  
20 instructions that I was given.

21 But I'm not offering an opinion on  
22 what a larger market output would look like  
23 and how it would affect Zuffa or any other  
24 competitor.



Page 247

1 BY MR. NORTH:

2 Q. Could Zuffa be a smaller company in  
3 the but-for world?

4 A. I don't know. I guess it could be.  
5 That would be a question for the economists.

6 Q. Could Zuffa's revenues be lower in a  
7 but-for world?

8 MR. KOFFMAN: Object to the form.

9 THE WITNESS: I'm not certain.

10 BY MR. NORTH:

11 Q. Would you agree that to perform an  
12 analysis of how much more fighters could be paid  
13 by Zuffa, you would need to consider a number of  
14 factors?

15 MR. KOFFMAN: Objection; vague.

16 THE WITNESS: Do you mean including or  
17 excluding the larger output?

18 BY MR. NORTH:

19 Q. I can be specific.

20 Would one factor that you would need  
21 to consider be how much money could be paid by  
22 foreclosed competitors in a but-for world?

23 MR. KOFFMAN: Object to the form.

24 THE WITNESS: If I wanted to calculate

Page 248

1 what?

2 BY MR. NORTH:

3 Q. If you wanted to perform an analysis  
4 of how much more fighters could be paid by Zuffa.

5 MR. KOFFMAN: Object to the form.

6 THE WITNESS: Well, I wouldn't  
7 characterize it that way. I would say  
8 that you would -- if you are going to  
9 contemplate a larger industry, and you want  
10 to know how much Zuffa could pay as it's  
11 part of that larger industry, you would need  
12 to know whether Zuffa was a larger or  
13 smaller company.

14 I think that's different than the way  
15 you characterized it, but that's how I would  
16 characterize it. Again, I wasn't asked to  
17 make an assumption on whether the industry  
18 would be larger or smaller.

19 BY MR. NORTH:

20 Q. Would you agree that, leaving aside  
21 the but-for world, Zuffa's EBITDA would decrease  
22 if it increased athlete compensation and held  
23 everything else constant?

24 A. Yes.

Page 249

1 Q. In testing the effect of Zuffa paying  
2 higher fighter compensation, did you consider how  
3 Zuffa paying higher fighter compensation would  
4 affect the size of the MMA market?

5 A. No.

6 Q. Are you offering an opinion on whether  
7 the compensation Zuffa pays athletes would affect  
8 the size of the MMA market?

9 A. I'm sorry. Could you repeat that  
10 again?

11 Q. Are you offering an opinion on whether  
12 the compensation Zuffa pays athletes would affect  
13 the size of the MMA market?

14 A. I'm not offering an opinion on that.  
15 I believe the economists are covering that topic.

16 Q. Did you consider how Zuffa paying  
17 higher fighter compensation would affect the  
18 number of competitors in the market?

19 A. No.

20 Q. Are you offering an opinion on it?

21 A. No.

22 Q. You previously testified that you did  
23 not know whether Zuffa would be larger or smaller  
24 if it increased athlete compensation at your

Page 250

1 previous deposition. Do you recall that?

2 A. Yes.

3 Q. Did you consider how Zuffa paying  
4 higher fighter compensation would affect Zuffa's  
5 size in your rebuttal report?

6 A. I assumed that Zuffa's size would not  
7 change at all in my rebuttal report. This is  
8 simply an analysis to determine at the same size  
9 how much more could they have paid.

10 Q. And on page 10, at Paragraph 6, you  
11 state that "Additional growth in the MMA industry  
12 would be a benefit to Zuffa."

13 Do you see that on the third line of  
14 Opinion 1?

15 MR. KOFFMAN: Sorry. Where are you?

16 MR. NORTH: Page 10, Paragraph 6,  
17 Opinion 1, the third line.

18 BY MR. NORTH:

19 Q. The clause of that sentence states:  
20 "without the benefit of any additional growth in  
21 the MMA industry."

22 Do you see that?

23 A. Yes.

24 Q. In what way would additional growth in